

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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In the Matter of	)	
	)	
Implementation of Section 309(j) of the	)	MM Docket No. 97-234
Communications Act – Competitive Bidding	)	
for Commercial Broadcast and Instructional	)	
Television Fixed Service Licenses	)	
	)	
Reexamination of the Policy Statement	)	GC Docket No. 92-52
on Comparative Broadcast Hearings	)	
	)	
Proposals to Reform the Commission’s	)	GEN Docket No. 90-264
Comparative Hearing Process to Expedite	)	
the Resolution of Cases	)	
	)	
TO: The Full Commission		

**PETITION FOR PARTIAL RECONSIDERATION**

Pursuant to Section 405 of the Communications Act, 47 U.S.C. Section 405, Thomas F. Beschta (“Beschta”), by his attorney, hereby respectfully requests the full Commission to partially reconsider its First Report and Order, in this proceeding, as follows:<sup>1</sup>

1. Beschta is a professional broadcaster. Until recently, he owned AM Broadcast Station WAQE and FM Broadcast Station WAQE-FM, Rice Lake, Wisconsin, and FM Broadcast Station WWLC, Balsam Lake, Wisconsin. Recently, however, Beschta sold these stations.

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<sup>1</sup>The Report was published on September 11, 1998, at 63 FR 48615 (September 11, 1998).

2. Beschta is not a speculator. However, on November 17, 1994, he filed an application for a construction permit for a new FM broadcast station at Spooner, Wisconsin. After Mr. Beschta's application was filed, the Congress of the United States passed the Balanced Budget Act of 1997, which changed the criteria for selecting broadcast licensees from a hearing system to a government auction system. In the same Balanced Budget Act, the Commission also provided for a 180 day settlement window, which expired in February of 1998. During the settlement window, Beschta made vigorous efforts to settle with his competitors. Indeed, these efforts nearly bore fruit. The case came within a "cat's whisker" of settlement. However, because of last minute hitches, the case did not settle and is now destined to go to government auction.

3. Mr. Beschta has expended large sums of money in the preparation and prosecution of his application; not as much as would have been expended if the application would have gone to hearing, but substantial sums, nonetheless, to procure a transmitter site, for legal and engineering expenses, and government filing fees.

4. Beschta respectfully submits that the Commission cannot properly auction the Spooner channel without first returning to him and the other affected applicants all of the monies which they have expended in reliance upon rules which contemplated that there would be a hearing. To auction the channel without first returning all of the money would constitute an unconstitutional taking of Beschta's property without due process of law. U.S. v. Winstar Corporation, 518 U.S. 839 (1996).

5. There is, moreover, another matter which Beschta desires to call to the Commission's attention. Section 309(j)(6)(E) of the Communications Act, enacted by the Congress as part of the Balanced Budget Act, reads as follows:

"(6) Rules of Construction. - Nothing in this subsection, or in the use of competitive bidding, shall -

(E) be construed to relieve the Commission of the obligation in the public interest to continue to use engineering solutions, negotiation, threshold qualifications, service regulations, and other means in order to avoid mutual exclusivity in application and licensing proceedings;"

In this Section, the Congress made clear its intention that the Commission should not use the auctions as a mere tool to extract money from the broadcasting industry. Instead, it should try wherever possible to avoid conflicts which require an auction.

6. Under the rules adopted in the First Report and Order, the Commission proposes that once bidding forms are filed (FCC Form 175), anti-collusion rules will kick into place which will prevent any further negotiations amongst the applicants. Beschta respectfully submits that this procedure is inconsistent with the provisions of Section 309(j)(6)(E) of the Communications Act.

7. Beschta still believes that the Spooner case can be settled and that the settlement can be devised in a manner which would be consistent with the current provisions of the Commission's Rules. There should, however, be opportunities for negotiated settlements, even after the bidding forms are filed. Experience has shown that most cases settle at the eleventh hour. Therefore, Beschta urges the Commission to adopt a procedure for a 60 day settlement window after the bidding forms are submitted.

8. There is an unfortunate trend in the broadcasting industry at this time. Large companies are rapidly gobbling up the ownership of all of the radio stations in the United States. Indeed, Beschta sold his stations in Rice Lake and Balsam Lake, because he was offered an attractive price by a larger broadcasting group, and concluded that he could not in his own best interests reject that price.

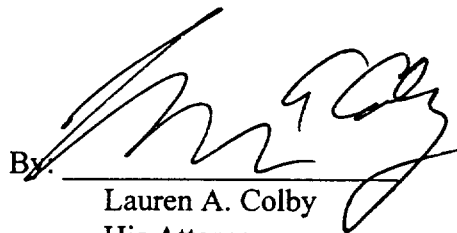
9. There should, however, be an opportunity for the "little guy" in the broadcast business. The little guy can scarcely prevail in a government auction against large corporate bidders. The Commission has proposed that the auctions be conducted on a cash on the barrelhead basis. Under such conditions, the spectrum will inevitably be awarded to those who raised the largest amount of cash. Often times, that will exclude minorities and women – groups for which the Commission has an express goal of encouraging broadcast ownership. The 60 day settlement window proposed by Beschta would open the door in many cases for small entrepreneurs, including minorities and women, to achieve whole or partial ownership of at least some of the channels that are going to be auctioned off. Thus, the settlement window serves the public interest.

Respectfully submitted,

THOMAS F. BESCHTA

October 5, 1998

Law Office of  
LAUREN A. COLBY  
10 E. Fourth Street  
P.O. Box 113  
Frederick, MD 21705-0113

By:   
Lauren A. Colby  
His Attorney